

R E M A R K S

Claims 1-16 are pending. Claims 9-16 have been withdrawn. Accordingly, claims 1-8 are at issue.

Applicants wish to thank the Examiner for the indication that claims 3, 6 and 8 would be allowable if amended to independent form. However, claims 3, 6 and 8 have not been so amended because it is believed that their base claims are allowable, as discussed more fully below.

Applicants respectfully traverse the rejection of claims 1, 2 and 4 as anticipated by Kokubunji et al (US 2002/0040776 A). It is respectfully submitted that the rejections are based upon a mischaracterization of the disclosure of Kokubunji and/or a misunderstanding of the claims.

Specifically, claim 1 recites spaced elongated tube slots in each of the first and second headers, with the tube slots in one header facing and aligned with the tube slots in the other header, and with one of the tube slots in each header being unoccupied. The Office Action alleges that the opening 135 of Kokubunji is a tube slot. However, the opening 135 is in the tank portion of the heat exchanger of Kokubunji and is in no way disclosed as being a tube slot. Indeed, Figure 5 clearly shows a plurality of tube slots and the hole 135 is clearly not one of the tube slots. Furthermore, the holes 135 of Kokubunji are not facing each other as recited in claim 1. Accordingly, the rejection based on Kokubunji of claims 1, 2 and 4 should be withdrawn.

Applicants respectfully traverse the rejection of claims 1, 2, 4-5 and 7 as anticipated by Nishishita EP 0859209 A1. Claim 1 recites spaced elongated tube slots in each of the first and second headers, with the tube slots in one header facing and aligned with the tube slots in the other header, and with one of the tube slots in each header being unoccupied. The Office Action asserts that the hole 15 of Nishishita is a tube slot as recited in claims 1-4. Clearly, as best seen in Fig. 32 of Nishishita, the opening 15 is not a tube slot as recited in claim 1, nor do the holes 15 Nishishita face each other as recited for the tube slots of claim 1. Accordingly, for this reason alone, the rejection based on Nishishita of claims 1, 2 and 4 should be withdrawn.

With respect to claims 5 and 7, these claims recite a second serpentine fin of a second fin height greater than the first fin height extending between tubes in the adjacent tube slots on the one side and in the adjacent tube slot on the opposite side. The Office Action asserts that the bonding plate 12 of Nishishita is an additional serpentine fin and further that Fig. 34 shows that the bonding plate 12 is of a greater height than the fins 3a. It is respectfully believed that these assertions are wrong on three points. First, the bonding plate 12 is expressly distinguished from fins at column 23, lines 14-20 of Nishishita. Indeed, this language expressly teaches away from using a serpentine fin in place of the bonding plate 12. In view of this express language in Nishishita, it is believed that it is a clear mischaracterization to refer to the

bonding plate 12 of Nishishita as a fin. Second, Fig. 34 discloses an alternate embodiment of the heat exchanger Nishishita wherein the tubes 4 and bonding plate 12 extend vertically. A specific type of bonding plate 12 is disclosed in Fig. 34 of Nishishita and there is nothing to indicate that any alternative embodiments would be appropriate in such a vertically extending construction. Indeed, if a corrugated bonding plate 12 were substituted for the specific bonding plate 12 disclosed in Fig. 34, it would interfere with the drainage provided by the upper weep hole 15 of Fig. 34 which is clearly undesirable. Accordingly, there is nothing in Nishishita to indicate that anything other than the disclosed bonding plate 12 of Fig. 34 would be appropriate. Third, and most importantly, it is respectfully submitted that Fig. 34 is too vague and inaccurate with respect to the actual dimensions of its tube spacings to conclude that the height of the bonding plate 12 is actually greater than that of the fins 3a. A simple review of the drawings shows that fin heights and tube heights vary because of drawing inaccuracies, as opposed to an intentional design as would be understood by one skilled in the art. In this regard, it should be noted that the height dimension of several of the tubes and fins in Nishishita et al appear to vary in the vertical direction for individual tubes and fins, again, clearly because of drawing inaccuracies. Furthermore, there is absolutely nothing in the written description of Nishishita that would lead one to the conclusion asserted in the Office Action that the bonding plate 12 is of

a greater height. In view of the foregoing, the rejection of claims 4-5 and 7 should be withdrawn.

Reconsideration of the rejections of claims 1, 2, 4-5 and 7 and the objections to claims 3, 6 and 8 are respectfully requested.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,
CLARK & MORTIMER

By

A handwritten signature in black ink, appearing to read "Jeffrey N. Fairchild", is written over a horizontal line.

Jeffery N. Fairchild
Reg. No. 37,825

June 22, 2005

500 West Madison Street
Suite 3800
Chicago, IL 60661-2511
(312) 876-1800